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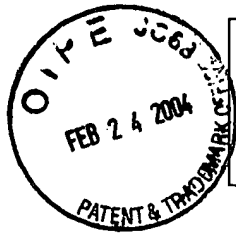
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Dated: 2/19/04 Signature: Carol Martin
(Carol Martin)

Docket No.: 64104-002USC1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Leonard Stevens, et al.

Application No.: 10/699,208

Confirmation No.:

Filed: October 31, 2003

Art Unit: N/A

For: METHOD AND APPARATUS FOR CLOSING
A SEVERED STERNUM

Examiner: Not Yet Assigned

**PETITION FOR FILING OF PATENT APPLICATION BY OTHER THAN
ALL OF THE INVENTORS UNDER 37 CFR 1.47(a)**

MS: Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby petitions the Commissioner to accept the filing of the above-identified U.S. Patent application with declarations signed by other than all of the inventors. A Declaration of J. Pat Heptig is submitted herewith in support of this petition. As shown below, Archibald S. Miller III, one of the named co-inventors for the above-identified patent application, was presented with a copy of the application papers for U.S. Patent Application Serial No. 10/699,208, and has refused join in the application with the other named inventor, Leonard Stevens.

I. Background

On March 7, 2002, Archibald S. Miller III ("Dr. Miller") filed U.S. Patent Application Serial No. 10/095,324 for a "Method and Apparatus for Closing a Severed Sternum." On May 1, 2003, the U.S. Patent & Trademark Office published U.S. Patent Application Serial No. 10/095,324 as Publication Number US 2003/0083694 A1. See Declaration of J. Pat Heptig at ¶ 3 (hereafter the "Heptig Decl.").

02/27/2004 AMONDAF1 00000131 10699208

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Shortly thereafter, in August 2003, Leonard Stevens gave written notice to Dr. Miller of his claim of co-inventorship in the inventions disclosed and claimed in patent application Serial No. 10/095,324. In September 2003, Joseph Ferretti, of the law firm Crowe & Dunlevy in Oklahoma City, responded to Mr. Stevens' co-inventorship claims on behalf of Dr. Miller. Heptig Decl. ¶¶ 4-5.

On October 29, 2003, counsel for Mr. Stevens sent a copy of the U.S. patent application later designated application Serial No. 10/699,208, along with a Declaration and Power of Attorney, to Dr. Miller's patent counsel via facsimile and Federal Express Priority Overnight. *Id.* at ¶ 6 (see also Exhibit 1 thereto). Dr. Miller's counsel was requested to forward the application and accompanying documents to Dr. Miller for review and signature. *Id.*

On October 30, 2003, Mr. Stevens' patent counsel received a telephone call from David Sullivan, who stated that he was an attorney at the law firm of Crowe & Dunlevy. Mr. Sullivan stated, among other things, that he had received the fax and would forward the patent application to Dr. Miller. *Id.* at ¶ 8. U.S. Patent Application Serial No. 10/699,208 is substantially similar to the patent application Serial No. 10/095,324 previously filed by Dr. Miller on March 7, 2002. *Id.* at ¶ 7. As a result, Dr. Miller's requested review of application Serial No. 10/699,208 should have been quick and easy.

On October 31, 2003, Mr. Stevens' patent counsel received a fax letter from Jimmy Goodman, who stated therein that he is one of the attorneys at the firm of Crowe & Dunlevy, representing Dr. Miller. In the letter, Mr. Goodman indicated that Dr. Miller would oppose and challenge the filing of the patent application, thus indicating his refusal to join in the application with Mr. Stevens. *Id.* at ¶ 9. Since that date, Dr. Miller has not communicated with Mr. Stevens or his counsel. *Id.* at ¶ 11.

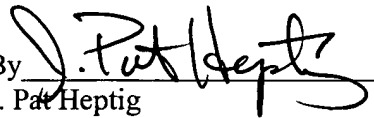
Patent Application Serial No. 10/699,208 was filed on October 31, 2003 in the U.S. Patent & Trademark Office. A Declaration and Power Of Attorney signed by Leonard Stevens and not signed by Archibald S. Miller, III was filed therewith. A return postcard was received from the U.S. Patent & Trademark Office indicating that the patent application was received and assigned U.S. Patent Application Serial No. 10/699,208. *Id.* at ¶ 10.

As established above, Dr. Miller was presented with a copy of the application papers and refused to sign the Declaration and Power Of Attorney or otherwise join in the application with Mr. Stevens. Accordingly, relief under 37 CFR §1.47(a) is respectfully requested.

The fee set forth in 37 CFR §1.17(h) is enclosed herewith. Please debit any underpayment or credit any overpayment to Deposit Account No. 10-0447. Should any additional fees be required, the Commissioner is hereby authorized to obtain such fees from Deposit Account No. 10-0447. A duplicate copy of this document is attached hereto.

The last known address of Dr. Miller is 6585 South Yale, Suite 315, Tulsa, Oklahoma 74136, USA.

Respectfully submitted,

By 
J. Pat Heptig

Registration No.: 40,643

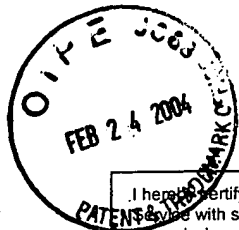
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Dated: 2/14/04

Signature: *Carol Martin*
(Carol Martin)

Docket No.: 64104-00002USC1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Leonard Stevens, et al.

Application No.: 10/699,208

Confirmation No.:

Filed: October 31, 2003

Art Unit: N/A

For: METHOD AND APPARATUS FOR CLOSING
A SEVERED STERNUM

Examiner: Not Yet Assigned

MS Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF J. PAT HEPTIG

I, J. PAT HEPTIG, hereby declare as follows:

1. My name is J. Pat Heptig. I am over the age of twenty one (21) and have personal knowledge of the matters set forth herein and each of them is true and correct.

2. I am a Shareholder with the law firm of Jenkins & Gilchrist, P.C. in Dallas, Texas. I represent Leonard Stevens, one of the named inventors in the above-referenced patent application Serial No. 10/699,208.

3. On May 1, 2003, the U.S. Patent & Trademark Office published U.S. Patent Application Serial No. 10/095,324, filed by Archibald S. Miller III ("Dr. Miller") on March 7, 2002. The Publication Number for that application is US 2003/0083694 A1.

4. In August 2003, Leonard Stevens gave written notice to Dr. Miller of Mr. Stevens' claim of co-inventorship in the inventions disclosed and claimed in patent application Serial No. 10/095,324.

5. In September 2003, Joseph Ferretti, of the law firm Crowe & Dunlevy in Oklahoma City, responded to Mr. Stevens' co-inventorship claims on behalf of Dr. Miller.

6. On October 29, 2003, I sent a copy of the U.S. patent application (later designated application Serial No. 10/669,208) and accompanying Declaration and Power of Attorney to Mr. Ferretti, Dr. Miller's patent attorney, via facsimile and Federal Express Priority Overnight. A true and correct copy of that patent application and accompanying documents is attached hereto as Exhibit 1. In the accompanying cover letter to Mr. Ferretti, I requested that Mr. Ferretti forward the draft application to Dr. Miller for his review. I further requested that Dr. Miller execute the enclosed Declaration and Power Of Attorney and return it to me via facsimile.

7. U.S. Patent Application Serial No. 10/699,208 is substantially similar to the patent application filed by Dr. Miller on March 7, 2002, namely Application Serial No. 10/095,324.

8. On October 30, 2003, I received a telephone call from David Sullivan, who stated that he was an attorney at the law firm of Crowe & Dunlevy. Mr. Sullivan stated, among other things, that he had received the fax and would forward the application to Dr. Miller.

9. On October 31, 2003, I received a fax letter from, Jimmy Goodman, who stated therein that he is one of the attorneys at the firm of Crowe & Dunlevy, representing Dr. Miller. In the letter, Mr. Goodman indicated that the filing of the application would be opposed and challenged by Dr. Miller, thus indicating a refusal by Dr. Miller to join in the application with Mr. Stevens. A true and correct copy of the fax letter from Mr. Goodman is attached as Exhibit 2.

10. Patent Application Serial No. 10/699,208 was filed on October 31, 2003 in the U.S. Patent & Trademark Office. A Declaration and Power Of Attorney signed by Leonard Stevens and not signed by Archibald S. Miller, III was filed therewith. A return postcard was received from the U.S. Patent &

Trademark Office indicating that the patent application was received and assigned U.S. Patent Application Serial No. 10/699,208. A true and correct copy of the return postcard is attached as Exhibit 3.

11. As of the date of this declaration, I have not received any further communication from Dr. Miller or his attorneys.

I hereby declare further that all statements made herein of my own knowledge are true, and that all statements made on information and belief are to be true; and further that these statements are made with the knowledge that false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States code, and that such false statements may jeopardize the validity of the application or any patent issuing thereon. This declaration is executed on this 18 day of February, 2004.

A handwritten signature in black ink, appearing to read "J. Pat Heptig", is written over a horizontal line.

J. PAT HEPTIG

**** Transmit Conf. Report ****

P.1

Oct 29 2003 18:06

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Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

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SUITE 3200
DALLAS, TEXAS 75202

FROM THE DESK OF:

J. Pat Heptig
(214) 855-4779

(214) 855-4500
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SAN ANTONIO, TEXAS

WASHINGTON, D.C.

RECIPIENT**COMPANY****FAX NO.****PHONE NO.**

1. Joe Ferretti, Esq.

Crowe & Dunlevy P.C.

405-239-6651

405-235-7700

• MESSAGE •

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EXHIBIT

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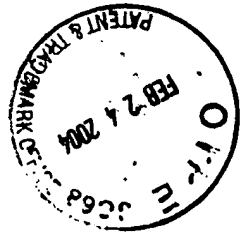
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Does this shipment contain dangerous goods?
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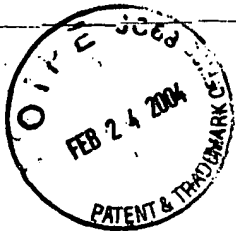
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ATTORNEYS AND COUNSELORS AT LAW
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FAX COVER LETTER

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NAME	COMPANY	TELEPHONE	FAX
J. Pat Heptig	Jenkins & Gilchrist	214-855-4500	214-855-4300

FROM: Jimmy Goodman

DATE SENT: October 31, 2003

CLIENT-MATTER NUMBER: 99999-99999

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THE H-POINT OFFICE BUILDING
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NORMAN, OK 73072-6705
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JIMMY GOODMAN
Direct Tel: 405.235.7717
Direct Fax: 405.272.5272

goodmanj@crowedunlevy.com

October 31, 2003

J. Pat Heptig
Jenkins & Gilchrist
1445 Ross Avenue, Suite 3200
Dallas, TX 75202

**VIA TELECOPY
AND REGULAR MAIL**

Re: Archibald S. Miller III Invention

Dear Mr. Heptig:

This is in response to your facsimile letter to Mr. Ferretti dated, and faxed after regular business hours on, October 29, 2003. Due to its late transmission on the 29th, the letter was not seen by Mr. Ferretti until the morning of October 30.

Mr. Ferretti was and is busy on other pressing business matters and was not able to review and respond to your demand for immediate return mail compliance. Mr. David Sullivan of our office responded in his place, advising you of his unfamiliarity with the matter, but inquiring as to the perceived time deadline which would justify your ultimatum for an immediate response in light of Mr. Ferretti's unavailability. You stated there was a deadline of November 1 for filing the proposed joint patent application, based on a "disclosure." It is unclear why a continuation application based on a parent application filed March 7, 2002 would have a "disclosure" deadline of November 1, 2003. Nonetheless, you would not agree to extend your apparently self-imposed ultimatum for a firm response by 3:00 p.m. on October 31, 2003, so that Mr. Ferretti could adequately and fairly review and respond.

We are still investigating the claims made by Mr. Stevens. While that investigation is ongoing and still incomplete, to date we find no justification for his claims of co-inventorship. Indeed, there appears to be some compelling evidence that many of the "ideas" he purports to have generated are documented in the records of Dr. Miller months and years prior to Mr. Stevens being hired (and paid) to perform his ministerial preparation of drawings and prototypes. A simple reading of the proposed joint application you prepared makes it clear that Mr. Stevens has neither the practical experience nor the

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200 KENNEDY BUILDING
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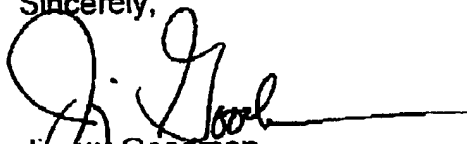
October 31, 2003

Page 2

formal education to conceive, let alone describe, the physiological and medical content in the application.

Please advise Mr. Stevens that the filing of this application will be opposed and challenged, and that he will be held responsible for all losses incurred by Dr. Miller and his affiliates as a result of Mr. Stevens' illegitimate claims. He should proceed accordingly.

Sincerely,



Jimmy Goodman
For the Firm

cc: Archibald S. Miller III
Joseph J. Ferretti
David M. Sullivan

INTELLECTUAL PROPERTY

NOV 14 2003

JENKENS & GILCHRIST

Express Mail No. EV334843383US

Mailed: October 31 2003

JPH:cam

Re:Applicant(s): Leonard Stevens et al.

Application No. New Application

Title: Method and Apparatus for Closing a Severed Sternam

Docket No.: 64104-00002USPT

The following documents were received in the USPTMO on the date stamped below:

1. PTO Transmittal Letter (in duplicate)
2. 17 pages of Specification, Claims and Abstract
3. 5 sheets of formal Figures 1-7
4. Declaration (unsigned)
5. Relationship of Claims in Present Application to U.S. Patent Application No. 10/095,324
6. Check in the amount of \$427.00 for filing fee
7. Acknowledgment Postcard

16834 U.S. PTO

10/699208



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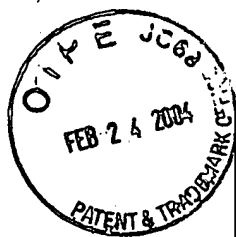
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Int: Kh DT: 11/18/03
Compl-6 Date: 10/31
filed App

EXHIBIT

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3



FEE TRANSMITTAL for FY 2004

Effective 10/01/2003, Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 130.00

Complete if Known

Application Number 10/699208
Filing Date October 31, 2003
First Named Inventor Leonard Stevens
Examiner Name Not Yet Assigned
Art Unit N/A
Attorney Docket No. 64104-00002USC1.001

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ Other ☐ None

Deposit Account:

Deposit Account Number 10-0447

Deposit Account Name Jenkens & Gilchrist, a Professional Corporation

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☐ Charge any additional fee(s) during the pendency of this application

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$) 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below	Fee Paid
Total Claims	<input type="text"/>	-20** =	<input type="text"/>	x <input type="text"/>	= <input type="text"/>
Independent Claims	<input type="text"/>	-3** =	<input type="text"/>	x <input type="text"/>	= <input type="text"/>
Multiple Dependent				<input type="text"/>	= <input type="text"/>

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

SUBMITTED BY

Name (Print/Type) J. Pat Heptig

Registration No. (Attorney/Agent) 40,643

(Complete if applicable)

Telephone (214) 855-4779

Signature

J. Pat Heptig

Date

2/18/04

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Signature:

Carol Martin Carol Martin)